IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2003

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Criminal Original Petition No.4321 of 2003
and Crl.O.P.Nos 4322 and 4323 of 2003

1. M/s.Raja Paper & Board
Mill, rep. by
T.Solomon Durairaj

2. T.Solomon Durairaj

3. S.Jeyakumari .. Petitioners in all O.Ps.

-Vs-

K.Sheikshindha .. Respondent in all O.Ps.

Petitions filed under Section 482 of the Criminal Procedure Code,
praying for the reliefs as stated therein.

!For petitioners : Mr.K.Srinivasan

^For respondent : Mr.O.Srinath,
Govt. Advocate.

:O R D E R

All the above criminal original petitions have been filed by
one and the same petitioners, who are the accused in C.C. Nos.483, 484 and
485 of 2002 pending on the file of the Court of Judicial Magistrate No.I,
Tuticorin, for the commission of an offence punishable under Sections
14(2)/14A of the Employees Provident Funds & Miscellaneous Provisions Act,
1952, praying to call for the records in the said C.C. Nos.483 to 485 of 2002
and to quash the same.

2. For easy reference and for the sake of convenience,
Crl.O.P. Nos.4321 to 4323 of 2002 are hereinafter referred to as the first,
second and the third petitions, respectively.

3. Since all the three matters are interconnected and
interrelated to each other to the above three proceedings and further the
parties being one and the same, and the subject matter also being one for

different months of payments of contribution and administrative charges for the Employment Provident Fund Organisation, they are taken up together for consideration and this common order is passed.

4. The first petition is regarding the non-payment of the contribution and administrative charges relating to the period of December 199 7, January 1998 and February 1998 for a total sum of Rs.2,175/= respectively due for payment on 15th January, February and March, 1998. The second petition is regarding the non-payment of the contribution and administrative charges relating to the period of March to April 19 98, for a total sum of Rs.1,929/= respectively due for payment on 15 th April, May and June, 1998. The third petition is regarding the non-payment of the contribution and administrative charges relating to the period of June to August 1998, for a total sum of Rs.1,849/= respectively, due for payment on 15th July, August and September, 1998.

5. In the petitions filed on behalf of the petitioners, which are similar to each other, excepting for the figures, the petitioners would submit that the respondent has filed a complaint against them alleging that they have committed the offence punishable under Sections 1 4(2)/14A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act'); that the first petitioner is the establishment within the meaning of the Act; that it is alleged in the complaint that under Sections 6/6A/6C of the Act r/w.38 of the Employees' Provident Fund Scheme, 1952, para. 4 of the Employees' Pension Scheme, 1995 and para.8 of the Employees' Deposit linked Insurance Scheme, 1976, the petitioners were required to pay the Employees' and Employer's contributions towards the Employees' Provident Fund, Employees' Pension Fund and Employees' Deposit linked Insurance Fund, in respect of the Employees of the said establishment together with administrative charges within fifteen days of the close of every month and in spite of several requests, contributions and the administrative charges were not paid which have been calculated as mentioned in para.4 above.

6. The further averments of the petitions are that prior to the filing of the said complaint, the respondent sent a show cause notice dated 31.5.2001 with regard to all the above three cases calling upon the first and the second petitioners to show cause as to why they should not be prosecuted under Sections 14(1) 14(1A), 14 A and 14 AA of the Act, paragraphs 76 b/d of the Employees' Provident Fund Scheme, 1 952 for not filing the returns and also for not remitting the provident fund dues for the period December 1997 to October 1999. Further mentioning in the notice that the contributions liable to be paid were to the tune of Rs.36,761.20; that no notice of demand was made on 30 .4.2001 for the said amount; that the second petitioner sent a reply on 6.6.2001 stating that the first petitioner Mill was not functioning for three years and there was no one employed in the firm and hence they were not liable to pay any contribution or to file the returns.

7. While so, on 10.1.2002, the Recovery Officer of the E.P.F. Organisation attached the properties of the petitioners by order TN/II/ 41 373/TTN-I/RECY/2002; that the first petitioner challenged the said order of attachment, on the ground that the notice of demand was illegal and since no

workers were employed, there was no liability to pay the contribution charges or file returns, by way of W.P.No.7503 of 200 2 and the same was admitted on condition that the petitioner should deposit a sum of Rs.15,000/=, as per the orders of this Court in W.M. P.No.10346 of 2002; that in terms of the said order, the petitioner had deposited the said amount of Rs.15,000/= with the Regional Provident Fund Commissioner on 15.4.2002; that the said complaint pertains to the non-payment of the contribution to the said period covered under the notice issued by the respondent, and therefore, the complaint is liable to be quashed on grounds that the third petitioner is the wife of the second petitioner and she has nothing to do with the conduct of the business of the first petitioner, against whom, there is not even an allegation; that the first petitioner establishment was closed since 1999; that this Court ordered stay of recovery as per W.M.P. No.10346 of 2002 in W.P.No.7503 of 2002 on deposit of Rs.15,000/= and the same has been complied with; that while so, the continuation of the prosecution proceeding relating to the very same subject matter would be abuse of process of the Court; that the Writ Petition pending before this Court has a bearing on the present criminal prosecution; that on similar prosecutions, quash petitions having been filed, they have been admitted by this Court with interim stay of criminal prosecutions and on such grounds, the petitioners would pray for the relief extracted supra.

8. At this juncture, learned counsel appearing on behalf of the petitioners would submit a judgment reported in 1992-L.W.(Crl.)120 (Alfred Borg & Co., India (P) Ltd. & 13 others Vs. Antox India (P) Ltd.), wherein it is held:

"....In catena of cases, the Apex Court has held, that initiating prosecution against sleeping partners or women, when the company is the main offender, cannot be sustained unless there was basic material to show that such partners or directors were also in charge of and responsible for the conduct of the business of the company. Merely, by alleging that directors are in charge of the company, as is found in paragraph 11 of the complaint, petitioners 2 to 6 cannot be prosecuted. The complainant, should further show that petitioners 2 to 6 were also responsible for the day-to-day conduct of the business of the company. Similarly, as far as petitioners 8 to 14 are concerned, paragraph 11 reads that they were responsible for the business of the company, but does not allege that they were in charge of the company. A quick look at the law laid down by the Apex Court will be useful in this context. In Delhi Municipality v. Ram Kishan (AIR 1983 SC 67) the pronouncement reads as hereunder:
"So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, it can be said that no case against the Directors has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed by the High Court."

In that case the averments in the complaint reads as follows:

"That the accused No.3 is the Manager, of accused No.2 and accused Nos.4 to 7 are the Directors of Accused No.2 and as such they were in charge of and responsible for the conduct of business of accused No.2 at the time of sampling."

Thus it is apparent that mere extraction of the Section in the complaint would not suffice, and further vague allegations or assumptions, would not lead anywhere. The complaint must prima facie disclose, that there was any act committed by the Directors, from which a reasonable inference can be drawn of their vicarious liability. Looked at from any angle, on the averments available in the complaint, the pending prosecution cannot be maintained."

The next judgment cited by the learned counsel is one reported in 200 1(2) Crimes 56 (SC) (C.I.T., Mumbai v. Bhupen Champak Lal Dalal & Anr. etc.), wherein it is held:

The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority.

On such arguments, learned counsel for the petitioners would pray to grant the relief sought for. On the other hand, on the part of the respondent, no appearance has been shown, and therefore, this Court is left with no option but to pass its order, in consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners.

9. The above criminal cases initiated in C.C.Nos.483 to 485 of 2002 are the subject matters relating to Crl.O.P.Nos.4321 to 4323 of 2003 , towards prosecuting the petitioners, among whom, the first petitioner is the establishment, the second and third petitioners are its partners and the prosecutions have been launched for non-payment of the contributions and administrative charges, in spite of several requests made on the part of the respondent for the periods of December 1997 , January 1998 and February 1998 so far as it is concerned with the first petition above, March to April 1998, so far as it is concerned with the second petition above and June to August 1998, so far as it is concerned with the third petition above.

10. On the part of the petitioners, they would only come forward to submit that they have initiated writ proceedings in W.P.No.7503 of 2002 against the order of attachment and the Writ Court passed orders of stay in W.M.P.No.10346 of 2002, and therefore, these prosecutions launched by the respondent cannot be sustained in law, nor is it necessary on the part of the

lower court to proceed with the same, since a sum of Rs.15,000/= has already been deposited in Court as per the directions of the Writ Court.

11. Be that as it may, the points that arise for consideration are, whether the petitioners are liable to pay these contributions or not within the meaning of the relevant provisions of law and whether the respondent is entitled to proceed against the petitioners under Sections 14(1) 14(1A), 14 A and 14 AA of the Act and the other connected provisions of law?

12. At the outset, it is relevant mentioning that in order to save the properties from being attached, the petitioners might have gone to the Writ Court and might have got the interim orders of stay of attachment of the properties, in compliance of the direction of the Writ Court, making a deposit of Rs.15,000/=. But, at the same time, in order to avert the prosecution that could be launched in the manner that it has been done in all the above three calender cases registered in C.C.Nos.483 to 485 of 2002, the petitioners do not seem to have obtained any Court order. They have to pay the routine contributions and administrative charges to the Employees' Provident Fund, Employees' Pension Scheme and the Employees' Deposit linked Insurance Scheme and unless they are done, nothing else will obstruct the Courts from proceeding against the petitioners, and therefore, there is absolutely no defence against the non-payment of the contributions and administrative charges for the provident fund and other measures, since they are the welfare measures made for the well being of the employees. The reasons assigned on the part of the petitioners are not convincing nor gratifying to cause interference into such criminal proceedings initiated by the respondent in accordance with the penal provisions of the Act. The legal propositions shown are also not having any bearing on the facts of the case concerned and hence this Court is of the strong view that the petitioners are not entitled to the reliefs sought for in any manner, particularly for the quash of the above criminal proceedings pending on the file of the Court of Judicial Magistrate No.I, Tuticorin.

In result, all the above criminal original petitions are without merit and they are dismissed as such. Consequently, Crl.M.P. Nos.1504, 1506 and 1508 of 2003 are also dismissed.

Index:Yes.
Internet:Yes.
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